Pension Plans and AML Requirements

HMRC Has Relaxed the Reporting Requirement

In January, we provided an update on the latest anti-money laundering (AML) regulations and the steps that trustees of UK pension plans should be taking in order to comply. The AML regulations implement the EU's **fourth** money laundering directive.

Reporting Duties

We are pleased to say that HMRC has announced that the reporting requirement will be relaxed for registered pension plans.

By "reporting" requirement, we mean the requirement to register on HMRC's new Trust Registration Service, which arises in respect of a "taxable relevant trust". Under legislation, trustees are caught by the reporting duty if they incur a liability to any of the following taxes ("trigger taxes"):

- Income tax
- Capital gains tax
- Inheritance tax
- Stamp duty reserve tax
- Stamp duty land and buildings tax (in Scotland)
- Stamp duty land tax.

HMRC has now announced that trustees of **registered** pension plans (i.e. plans that are registered under the Pension Schemes Online or Manage and Register Pension Scheme services) no longer need register on the Trust Registration Service. HMRC has started to publish its revised guidance on GOV.UK, but this is not yet complete.

HMRC guidance, which is still currently in draft form, states that trustees who have already registered on the Trust Registration Service need take no further action and that trustees will not be penalised for failing to register on the Trust Registration Service. We will keep the position under review and will provide an update if the position changes such that trustees do need to take some form of action.

Unregistered pension plans, such as EFRBS, will continue to be subject to the reporting duties and will need to register on the Trust Registration Service if the trustees become liable to one of the trigger taxes.

Should Trustees Register on the Trust Registration Service Anyway?

HMRC has confirmed that trustees of registered pension plans, who incur a liability to one of the trigger taxes, may still register on the Trust Registration Service if they wish. Aside from the practicalities of registering on the Trust Registration Service, it is worth considering whether the wider implications might render registration undesirable.

The **fifth** money laundering directive, discussed below, could result in all UK occupational pension plans set up under trust being required to make publicly available details of their "beneficial owners" to those who can prove a legitimate interest in obtaining the information. Given HMRC's latest relaxation of the requirements for registered pension plans, we hope that HMRC will exempt registered pension plans from the more stringent public disclosure requirements that would need to be implemented under the fifth money laundering directive. However, the fifth money laundering directive does not provide any exemptions for occupational pension plans, so it remains to be seen what approach HMRC will take in this regard. HMRC will be required to share its register of express trusts with other EU member states. Voluntary registration on the Trust Registration Service, therefore, might inadvertently expose trustees to greater public disclosure requirements than would have been the case had they not registered on the Trust Registration Service.

Record Keeping Duties

Trustees' record keeping duties under the AML legislation continue to apply and have not been relaxed. Please see our How2 Do Pensions Quick Guide for further information.

Fifth Money Laundering Directive

On 9 July, a fifth EU money laundering directive entered into force and must be implemented into UK law by 10 January 2020. The highlights of the fifth money laundering directive are as follows:

- The directive does not contain any exemptions for occupational pension plans.
- The directive extends the transparency provisions for express trusts (including occupational pension plans), such that beneficial ownership information (name, month and year of birth, country of residence, nationality and nature of interest in the trust) would be made available to anyone who could show a legitimate public interest. This might include investigative journalists.

- The idea is that trust information would be available to the same extent that corporate ownership information is available to the public. In the UK, this information is freely available via Companies House website.
- HMRC will need to establish a new register (or perhaps extend the Trust Registration Service) so that **all** express trusts are registered on it, not just those that have been liable for a trigger tax. This register must be established within 20 months of the directive entering into force. Given the recent relaxation of requirements for registered pension schemes, it is possible that HMRC may exclude registered pension schemes from this requirement (despite there being no exemption within the directive itself).
- There will be a new central European platform so that registers in all EU member states will be accessible by other member states. This must be established within 32 months of the directive entering into force. While this period will not expire until after the UK has left the European Union, the UK may be required and/or agree to comply with the sharing of its trust register via the central European platform in order to assist with the combatting of international terrorism and money laundering.
- There are exemptions from disclosure of beneficial ownership information (on a case by case basis in exceptional circumstances) in the event that the disclosure of personal data might put a beneficial owner at disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation or where the beneficial owner is a minor or otherwise incapable.
- Beneficial ownership information would need to remain on the register for between five and 10 years after other records have been deleted.

It is likely that the UK will have to incorporate some, if not all, of the fifth money laundering directive into UK laws, although it remains to be seen whether the Treasury/HMRC will take a view and exempt occupational pension schemes from the more detailed reporting requirements.

If you have any queries, or would like further assistance with trustees' record-keeping duties, your usual contact would be happy to assist. Alternatively, please contact one of the partners listed in this communication.

Contacts

Kirsty Bartlett
Partner, London
T +44 20 7655 0298
E kirsty.bartlett@squirepb.com

Matthew Giles
Partner, Birmingham
T +44 121 222 3296
E matthew.giles@squirepb.com

Elizabeth Graham
Partner, Leeds
T +44 113 284 7494
E elizabeth.graham@squirepb.com

David Griffiths
Partner, Manchester
T +44 161 830 5359
E david.griffiths@squirepb.com

Wendy Hunter
Partner, London
T +44 20 7655 1119
E wendy.hunter@squirepb.com

Catherine McKenna
Partner, Leeds
T +44 113 284 7045
E catherine.mckenna@squirepb.com

Helen Miles
Partner, Birmingham
T +44 121 222 3138
E helen.miles@squirepb.com

Clifford Sims
Partner, London
T +44 20 7655 1193
E clifford.sims@squirepb.com

Philip Sutton
Partner, Birmingham
T +44 121 222 3541
E philip.sutton@squirepb.com

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